

representations, the Commission finds good cause, consistent with section 19(b)(2) of the Act,<sup>9</sup> to approve the proposed rule change to extend the Pilot Program, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that the extension of the Pilot Program will permit the Exchange to gain additional experience with its operation. Further, the Commission notes that no changes are being made to the Pilot Program other than its extension until September 30, 2004. Accordingly, the Commission is approving, on an accelerated basis, the proposed extension of the Pilot Program until September 30, 2004.<sup>10</sup>

## V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the six-month extension of the Pilot Program until September 30, 2004, as set forth in SR-Amex-2004-18, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49489; File No. SR-DTC-2004-01]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Termination of TaxReclaim Service

March 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on March 8, 2004, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit

comments on the proposed rule change from interested parties.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would permit DTC to terminate its TaxReclaim service.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change consists of the termination of DTC's TaxReclaim service. TaxReclaim assists DTC participants in preparing foreign tax reclaim forms required for reclaiming taxes withheld by foreign jurisdictions with respect to distributions in foreign securities. Using DTC's Participant Terminal System, DTC participants input data relating to the beneficial owner, foreign security, and payment details as required by the country of issuance. TaxReclaim processes the information and transmits back to the participant the completed tax reclaim form, reclaim calculation, and instructions for filing the reclaim form.

TaxReclaim was introduced in 1999. Usage in recent years has decreased significantly due in part to the expansion of DTC's TaxRelief product. TaxRelief facilitates participants' ability to obtain tax relief at the source, reducing the instances of over-withholding by the taxing authorities of the foreign jurisdiction. The expansion of TaxRelief has reduced the need for participants to use TaxReclaim to file reclaim forms. In calendar year 2003, usage of TaxReclaim declined to 209 transactions processed by seven participants.

DTC notified the users of TaxReclaim in January 2004 that the service would be terminated in 2004. All users have found alternate tax reclaim service

providers, and there are currently no users of the TaxReclaim service.

The proposed rule change is consistent with the requirements of section 17A(b)(3)(A) of the Act<sup>3</sup> and the rules and regulations thereunder applicable to DTC and is consistent with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible. The proposed rule change promotes the efficient allocation of DTC's resources and services among DTC's participants by terminating operation of a service that was not being utilized by a sufficient number of DTC participants to support its costs.

##### (B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

##### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not solicited nor received written comments on the proposed rule change. DTC will inform the Commission of any written comments it receives.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change relating to the deleted fine has become effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act<sup>4</sup> and Rule 19b-4(f)(4)<sup>5</sup> thereunder because the proposed rule effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> The Commission has modified the text of the summaries prepared by DTC.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> 17 CFR 240.19b-4(f)(4).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-DTC-2004-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in either hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of such filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at <http://www.dtc.org>. All submissions should refer to File No. SR-DTC-2004-01 and should be submitted by April 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49495; File No. SR-PCX-2004-16]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Trading Hours for Options on Exchange-Traded Funds

March 29, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 10, 2004, the Pacific Exchange, Inc. ("PCX"

or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the PCX. The PCX filed the proposal pursuant to section 19(b)(3)(A) under the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend Commentary .02 to PCX Rule 4.2, "Trading Sessions," to provide that options on exchange-traded funds ("ETFs") will trade until 1:15 p.m. (Pacific Time) each business day. The text of the rule appears below. Additions are *italicized*.

#### Trading Sessions

Rule 4.2—No change.

Commentary:

.01—No change.

.02 The hours for trading options on Nasdaq-100 Index Tracking Stock *and options on Exchange Traded Funds* will commence at 6:30 a.m. and end at 1:15 p.m. each business day, except the last trading day of each calendar month, when trading in options on Nasdaq-100 Index tracking Stock will end at 1:05 p.m.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The PCX's rules permit members to effect transactions on the options floor

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> The PCX has asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii).

of the PCX until 1:02 p.m. (Pacific Time) for equity options and until 1:15 p.m. (Pacific Time) for index options each business day.<sup>6</sup> The PCX's rules also provide that the hours for trading options on the Nasdaq-100 Index Tracking Stock ("QQQs") commence at 6:30 a.m. (Pacific Time) and end at 1:15 p.m. (Pacific Time) each business day except the last trading day of each calendar month, when trading in options on the QQQs ends at 1:05 p.m. (Pacific Time).

The purpose of the proposal is to establish the hours of trading in options on ETFs from 6:30 a.m. (Pacific Time) to 1:15 p.m. (Pacific Time) except the last trading day of each calendar month, when trading in options on the QQQs will end at 1:05 p.m. (Pacific Time). According to the PCX, with the exception of the last trading day of each calendar month, the proposal applies the same trading hours to options on index products, options on the QQQs, and options on all other ETFs. The PCX believes that although ETFs are not themselves index option products,<sup>7</sup> they nonetheless are designed to closely track the price and yield performance of the index products and should be evaluated the same way for the purpose of establishing trading hours for ETFs.

###### 2. Statutory Basis

The PCX believes that the proposed amendments will assist in allowing the PCX to offer investors the same trading session for options on ETFs that it affords to trading options on index products. The PCX believes that the proposal is consistent with section 6(b)(5) of the Act<sup>8</sup> in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not

<sup>6</sup> See PCX Rule 4.2, Commentary .01.

<sup>7</sup> For example, the QQQs represent ownership in the Nasdaq-100 Trust, a long-term unit investment trust established to accumulate and hold a portfolio of the equity securities that comprise the Nasdaq-100 Index. The Nasdaq-100 Index includes 100 of the largest non-financial companies listed on the Nasdaq National Market. The Nasdaq-100 reflects Nasdaq's largest growth companies across major industry groups with all index components having a market capitalization of at least \$500 million and an average daily trading volume of at least 100,000 shares.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.